Washington State Department of Transportation

# Developer / Local Agency Agreement Construction by Developer At Developer Expense	**Developer and Address**
	Local Agency and Address

Agreement Number	Section / Location

State Route No.	Control Section No.	Region	Description of Work
Surety Bond		Work Hours	

This AGREEMENT, made and entered into this _____ day of _____ , _____ , between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", the above named organization, hereinafter called the "DEVELOPER" and the above named City or County, hereinafter called the "LOCAL AGENCY".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or related improvements within the STATE's rights-of-way, and

WHEREAS, the STATE, LOCAL AGENCY, and DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

NOW THEREFORE, by virtue of Title 47.50 RCW and Title 47.24 RCW it is mutually agreed between the parties hereto as follows:

1. The STATE agrees to grant the DEVELOPER permission to construct the above described work within STATE right-of-way at the location described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.

2. The DEVELOPER agrees to construct the project as shown on Exhibit "B", at 100 percent DEVELOPER expense and responsibility. Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.

   The responsibility of the DEVELOPER for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the STATE's approval of plans, specifications, or work, or by the presence at the worksite of the STATE's representative(s), or by compliance by the DEVELOPER with any requests or recommendations made by such representative(s).

3. Any change of work from that shown on Exhibit "B" must be approved by the STATE prior to beginning such work. Plan revisions may be required by the STATE if design standards change between the time of the AGREEMENT approval and the beginning of construction.

4. Upon receipt of this AGREEMENT by the DEVELOPER the STATE may request a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this AGREEMENT.

   Failure by the DEVELOPER to provide the construction schedule within 30 days may cause cancellation of the AGREEMENT. Cancellation of this agreement will not lessen the DEVELOPER'S responsibility to reimburse the STATE for those costs agreed to by item 13.

5. Prior to beginning of construction, a preconstruction conference shall be held with the STATE, LOCAL AGENCY, DEVELOPER, and the DEVELOPER's contractor.

6. Should the DEVELOPER choose to perform the work outlined herein with other than its own forces, a representative of the DEVELOPER shall be present at all times unless otherwise agreed to by the Region Administrator. All contact between the STATE and DEVELOPER's contractor shall be through the representative of the DEVELOPER. Where the DEVELOPER chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the DEVELOPER within STATE right-of-way, until said requirement is met.

   The DEVELOPER, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.

7. Work within STATE right-of-way shall be restricted to the above specified hours and no work shall be allowed on the right-of-way Saturdays, Sundays, or Holidays, unless otherwise authorized by the STATE.

8. In the construction and/or maintenance of this facility, the DEVELOPER shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition. Any closures or restrictions of the highway shall require a STATE approved traffic control plan.

9. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and shall be subject to inspection by the STATE.

10. All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.

11. The DEVELOPER shall provide an executed surety bond acceptable to the STATE in the amount stated above. The bond shall:

Be signed by a surety that is registered with the Washington State Insurance Commissioner and appears on the current authorized list published by the Office of the Insurance Commissioner.

Be conditioned upon faithful performance of the AGREEMENT.

Guarantee that the surety shall indemnify and defend the STATE against any loss resulting from the DEVELOPER's failure to faithfully perform all the terms under this AGREEMENT.

Guarantee that the DEVELOPER or the contractor of the DEVELOPER shall pay all laborers, mechanics, subcontractors, and materialmen, or any person who provides supplies or provisions for carrying out the work.

The surety bond shall remain in full force and effect until released in writing by the STATE.

The STATE will recover from the DEVELOPER and its sureties such damages as the STATE may sustain by reason of the DEVELOPER's failure to comply with the provisions of this AGREEMENT.

12. The DEVELOPER shall obtain and keep in force for the duration of the work under this AGREEMENT, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW. The STATE and LOCAL AGENCY shall be specifically named as an insured in a policy with the same company which insures the DEVELOPER or by an endorsement to an existing policy. The amount of coverage shall be not less than a single limit of $1,000,000 for bodily injury, including death and property damage per occurrence. The DEVELOPER shall furnish the STATE proof of insurance prior to undertaking any work covered by this AGREEMENT.

13. The DEVELOPER shall reimburse the STATE for all actual direct and related indirect costs necessitated by this AGREEMENT. Such costs include, but are not limited to, agreement preparation, plan review, and construction inspection.

The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

14. The STATE shall have ownership and control of the completed facility within the STATE right-of-way and related traffic signal induction loops outside the STATE's right-of-way, all subject to final acceptance by the STATE with the exception that the DEVELOPER, his assigns, and successors, shall be responsible for the construction

and maintenance of the private connections and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops, and related appurtenances shall require STATE review and approval. The LOCAL AGENCY shall be responsible for continued ownership and maintenance of the completed facility outside of STATE right-of-way within right-of-way that the LOCAL AGENCY has interest.

15. The LOCAL AGENCY, if applicable, hereby grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has interest, within or adjacent to the right-of-way of the highway, for the purpose of maintaining and if necessary, reconstructing said traffic signal induction loops, and related appurtenances.

16. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and maintenance work provided for herein, shall subject this AGREEMENT to be canceled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.

17. The DEVELOPER shall indemnify and hold the STATE and LOCAL AGENCY, and their agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE and/or LOCAL AGENCY and/or their agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE and/or LOCAL AGENCY, and/or their agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE and/or LOCAL AGENCY, and/or their agents, employees and/or officers from any claims arising from the sole negligence of the STATE and/or LOCAL AGENCY, and/or their agents, employees, and/or officers.

18. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

DEVELOPER

By: _____

Title: _____

Date: _____

LOCAL AGENCY

By: _____

Title: _____

Date: _____

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

Date: _____